

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

April 28, 2005

**Elihu M. Harris State Building
Oakland, California**

In Attendance:

Chair John Wilson

Commissioners Allen Davenport, Kristen Schwenkmeyer, Robert B. Steinberg, and
Angie Wei

Executive Officer Christine Baker

Not in Attendance

Commissioners Leonard C. McLeod, Alfonso Salazar, Darrel "Shorty" Thacker

Call to Order

Chair John Wilson called the meeting to order at 10:00 a.m. He asked Frank Neuhauser to begin his presentation.

Cross-State Comparison of Occupational Injury Rates and Return to Work

Frank Neuhauser, University of California, Berkeley

Mr. Neuhauser stated that the purpose of the study is to determine California's record on safety, injury and illness rates, the duration of lost time and restricted work days. The study will also highlight the industries in California with the potential for the greatest improvement in safety. This study is in coordination with the Worker Occupational Safety and Health Education and Training Program (WOSHTEP) which attempts to improve safety.

Mr. Neuhauser stated that the objective was to study the Bureau of Labor Statistics (BLS) data on employers nationwide essentially from OSHA 200 logs. BLS data do not allow for a comparison between states because there is difference in industry mix and employer size, both of which are important factors in injury and illness data. This project is the first time that there has been a set of data that can be compared across states. Also, this is the first time that data on all states have been published.

At this point, Mr. Neuhauser stated, the data collection and analysis are complete. There are a number of measures in the data: incidence and duration, different types of injuries and illnesses, comparisons across states and across time. The challenge is how to present the data in a useful manner for CHSWC and for policy-makers.

Mr. Neuhauser then stated that after adjustment for occupation and industry mix, the data show that California has about 10 percent more incidents of injuries and illnesses than one would expect. The data can also show the amount of change in the incidents of injuries and illnesses.

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Mr. Neuhauser further stated that there are two different return-to-work measures: days away from work, or actual lost time; and duration of restricted work days, or how many days of modified or alternate work. States with high durations for lost time are often states which are not working with duration of restricted work days. In California, the data show that we are the highest state with days away from work and are among the highest with restricted work days. Typically, California ranks first in total lost work time, despite use of restricted work days.

Another way to look at the data, Mr. Neuhauser explained, is at the California level by specific industries. Those industries with high rates of injury and illness rates could then be the target of specific interventions.

Mr. Neuhauser stated that these charts could be maintained on the CHSWC website, and tools could be developed to manipulate the data. The US Bureau of Labor Statistics (BLS) is also interested in establishing a website for making these kinds of data more widely available.

The next step, Mr. Neuhauser stated will be to use the data to analyze why California performs poorly across some of these dimensions by analyzing which states have performed exceptionally well and what characteristics of their regulations are particularly effective for safety measures and return-to-work measures.

Chair Wilson asked if California alone or all states will use this information. Mr. Neuhauser replied that all states will have the same opportunity to use the data.

Judge Lachlan Taylor asked why banking would have a higher injury and illness rate than coal mining. Mr. Neuhauser replied that banking in California has triple the injury rate for banking than in the rest of the country.

Cathie Bigger-Smith, an occupational safety and health consultant, asked if there is a plan to extend this information to the public sector. Mr. Neuhauser responded that public sector injury and illness rates have not declined to anywhere near the level that private sector rates have declined to. The key question is whether the data in the public sector are complete, as state and local governments are not covered under OSHA regulation and they may not collect enough data to make their data representative. Mr. Neuhauser pointed out that in California, there are very low levels of OSHA inspection, high rates of injury, and very poor data.

Glen Brasseur from QME International, asked if any of the data cover specific diagnosis as to what the injury was, and if so, since California is following the impairment ratings in the AMA Guides, whether anyone is looking at what the impairment rating for injuries is. Mr. Neuhauser replied that the data is coded like insurance data so there are specific codes for specific injuries or illnesses. On the issue of impairment, the data are on injury or illness not impairment rating.

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Update on the AMA Guide Study and Permanent Disability Study

Christine Baker, CHSWC Executive Officer

Frank Neuhauser, UC Berkeley

David Bellusci, Workers' Compensation Insurance Rating Bureau (WCIRB)

Christine Baker, Executive Officer, stated that the CHSWC has joined in partnership with the WCIRB and done an independent study with the University of California Berkeley and has approved several projects to compare AMA Guides with the current multiplier and to the old permanent disability system. The studies use several methodologies to make this comparison.

Ms. Baker stated that CHSWC undertook a study with the WCIRB and a mapping was done by obtaining a random sample of Disability Evaluation Unit (DEU) cases. The files were redacted by CHSWC staff and sent to WCIRB for a totally blind evaluation by Chris Brigham, a renowned specialist in AMA guide ratings. Dr. Brigham was not provided with the California rating, just the description of the injury.

Ms. Baker then stated that the second CHSWC study is being conducted by Frank Neuhauser and is based on a distribution of the maximum AMA ratings compared to the maximum permanent disability rating schedule ratings.

A third study is of the actual ratings that are coming out of the DEU. This component of the study was delayed slightly because the DEU computer did not have the capacity to do the new ratings. This has been fixed and the ratings should be coming out of the system this week.

Ms. Baker commented that it is her understanding that no one study is perfect but that they all provide information about the rating system that has been implemented. David Bellusci and Frank Neuhauser provided a briefing on their work.

Mr. Bellusci from the WCIRB stated that one of the key roles of the WCIRB is to devise pure premium rates to present to the Insurance Commissioner. The WCIRB had filed for a 10.4 percent decrease which had not included any provision for the permanent disability schedule evaluation. The hearing has been continued until May 19th. Mr. Bellusci stated that the WCIRB will be amending the 10.4 percent decrease to reflect the Bureau's estimate of the impact of the potential savings.

Mr. Bellusci further stated that the WCIRB's role is to estimate the cost impact of going from the pre-January 2005 schedule to the subsequent schedule. In terms of total costs, both medical and indemnity costs, permanent disability benefits comprise about 20 percent of total costs. According to Mr. Bellusci, this means that if there is a 10 percent reduction in disability benefits, then there is a 2 percent decline in overall costs.

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Mr. Bellusci next stated that the WCIRB is bringing together a multi-disciplinary committee of people from insurance companies with different areas of expertise, including claims, underwriting, actuarial and medical, to assess the effect of the new permanent disability schedule. It will not be completely clear for a couple of years what the new permanent disability schedule will actually cost, as it will depend on how it is interpreted by DEU, by doctors doing the medical-legal reports and by judges, and it will depend on legal challenges; however, the Bureau needs to prospectively come up with a reasonable estimate.

Mr. Bellusci stated that the Bureau has developed three different measures and has attempted to provide a broad range of information. He acknowledged that CHSWC staff and Division of Workers' Compensation (DWC) staff have been very helpful in this process.

Mr. Bellusci stated that the first measure is to take a random sample of claims under the old system. There was some concern whether a medical-legal report prepared under the old system could be translated into an AMA rating under the new system. Dr. Brigham was able to translate the reports with a significant degree of certainty into a new rating under the new system. Each DEU office provided a number of reports, and they were sent to a central source in Sacramento, which then sent the files to CHSWC for redaction. Those files were then received by WCIRB which created a database.

According to Mr. Bellusci, WCIRB sent about 400-500 redacted reports to Dr. Brigham with the actual medical-legal information but not the DEU rating information. Dr. Brigham re-rated about 250 reports under the new Guides. Dr. Bacchus, a second expert with AMA Guides, re-rated about one-sixth of the claims. WCIRB is now in the process of analyzing the results.

The second study with CHSWC, Mr. Bellusci stated, headed by Frank Neuhauser, will look at distributions of ratings under the current system from DEU over the past couple of years and try to compare the maximum ratings on the disability evaluation to the maximum ratings under the current schedule and be able to say something about how the distributions might look. One study will make an estimate of the number of claims that will be rated zero under the new system; the second study will look at measuring the claims that remain in the system. The third approach, which will be based on data from the DEU, is to look at the actual ratings under the new system and to compare the actual ratings under the new system with similarly aged and similar types of claims that were rated under the old system.

Mr. Bellusci acknowledged that the three approaches have major limitations. The study by Dr. Brigham represents what an expert in rating claims with the AMA Guides would rate a claim and therefore does not represent reality. The second study tends to be more theoretical and that also does not represent reality. The third study is based more on

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reality but it represents only the first few months under the new system and does not reveal what will happen over time. The expected completion date of the study is May 12th, in time to provide recommendations to the Insurance Commissioner for a hearing on May 19th.

Mr. Neuhauser stated that the study he is responsible for is looking at a couple hundred thousand cases that have ratings in the DEU database and for assigning a potential different rating that represents the maximum value that the impairment would receive using the AMA Guides. If a back impairment in the AMA Guides could get a 100 percent rating vs. a 100 percent rating in the old California schedule, then the assumption would be made that those ratings in the California historical record should be reduced to 60 percent of what they were. Then the ratings and the cost in dollars after that reduction would be calculated. This study is near completion and will incorporate comments from Dr. Brigham on other options to use for the maximum. Mr. Neuhauser stated that the major limitation is that this study does not indicate which cases would get a rating of zero. The positive aspect of the study is that it does give a potentially better look at the opportunities doctors have to rate under the AMA schedule relative to the old schedule. The final piece, according to Mr. Neuhauser, is the comparison of the ratings coming through the DEU with data from the DEU database over the past several years. There have been some challenges with getting the data because the system has limited capacity. There is now new capacity and the data should be available by May 12th.

Commissioner Wei asked if there are any trends in the initial analysis. Mr. Bellusci replied that they do see trends but would not be able to quantify what the magnitude is until they have more data.

Commissioner Wei then stated that she has heard that it is difficult to compare the new schedule and the old schedule because they are so different. She then asked Mr. Bellusci to comment on the issue of subjectivity in the old schedule. Mr. Bellusci replied that the medical-legal report under one system could be very different from another. It is a key underlying assumption to try to re-rate. Dr. Brigham believes that he can reasonably translate within a relatively small margin a medical-legal report prepared under the old system into the AMA system for an identical injury. Even so, it might not look alike, and so there is a valid concern about translating a medical-legal report from one system to another.

Mr. Neuhauser responded that despite drawbacks to the study, there is an effort to get an estimate of this situation so that if employers can experience any savings and workers can experience less pressure on wages, there can be relief in the near term, rather than waiting three years for a greater amount of data to study the situation.

Chair Wilson asked if there is any way to compare the new ratings of California to any other states to find out if there is any system that seems to be doing what we are doing. Mr. Neuhauser said that it would be interesting to compare the data from the DEU to

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other states. There is a database for Colorado that Dr. Brigham has worked on that would be a good comparison. Chair Wilson stated that we should look into that. Mr. Neuhauser stated that he would get back to Chair Wilson about what they can do in this area.

Commissioner Steinberg stated that he wanted to clarify where the study is going and where we are. He thought that the permanent disability issue is only 20 percent of the whole issue. He questioned the dispute over the effect that the future earning capacity (FEC) modifiers would have on the study. Mr. Bellusci replied that they are evaluating the schedule that was implemented on an emergency basis. He stated that the numbers that come out of the studies will change. If all that changes is the FEC factors, it will be a simple matter to make changes. If there is more fundamental change, it may be that the studies will be obsolete for the purposes of estimating the premium rates.

Mr. Neuhauser stated that one of the results that will come out of the study will be to see how the AMA schedule compares with the old California schedule and what that tells us about where the FEC should be set. One of the challenges with the FEC is that they are set based on earnings losses related to the previous schedule, and we do not know that the ratings and the earnings losses will be consistent with the ratings. He stated that this is the methodology to use, even if sufficient data will be available one year from now.

Commissioner Steinberg asked whether the recommendations that have been made to the Insurance Commissioner included the permanent disability changes. Mr. Bellusci replied that what is included in the recommendations are the two changes in SB 899 that went into effect in January 2005 about the number of weeks and the 15 percent up or down, depending on return-to-work status, but that there is no further adjustment for the permanent disability schedule.

Commissioner Wei asked if Mr. Bellusci could clarify the recommended decrease in advisory pure premium rate. Mr. Bellusci replied that permanent disability is about 20 percent of total loss costs. If at the end of these studies, there is a 10 percent savings in permanent disability benefits, the 10.4 percent rate would increase to 12.4 percent. In other words, for every 10 percent estimated reduction in the permanent disability benefits coming out of the new permanent disability schedule, there will be an additional 2 point decrease added on to the 10.4 percent.

Commissioner Wei asked how much of the 10.4 decrease could be attributed to the return-to-work bump up/bump down and the number of weeks. Mr. Bellusci replied that the net impact would be about a 15 percent reduction in permanent disability benefits, which comprised about 3 percent of total costs.

Announcing that a quorum was present, Chair Wilson stated that he would like to congratulate Commissioner Schwenkmeyer for her reappointment to CHSWC.

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Minutes from the February 24, 2005, Meeting

Chair Wilson asked for a vote to approve the minutes of the February 24, 2005, meeting.

CHSWC Vote

Commissioner Wei moved to approve the minutes of the February 24, 2005, meeting, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Paying for Repackaged Drugs Under the California Workers' Compensation Official Medical Fee Schedule and Pharmacy Comparison

Barbara O. Wynn, RAND

Ms. Baker introduced Barbara Wynn who has been under contract with CHSWC and the DWC for the workers' compensation medical treatment study that was required under Assembly Bill (AB) 749 and started in March 2004. Ms. Baker stated that as part of that study, Ms. Wynn has looked into repackaging of drugs and she will provide an update on that study.

Ms. Wynn stated she had been asked to give a broad update on the medical treatment study that is funded by CHSWC and DWC. The key focus has been to evaluate medical treatment guidelines, analyze fee schedule issues, and design a system for monitoring access, cost, and quality. Ms. Wynn stated that the Evaluation of Medical Treatment Guidelines Report issued on November 15, 2004, revealed that the American College of Occupational and Environmental Medicine (ACOEM) and the American Academy of Orthopedic Surgeons (AAOS) guidelines did a poor job of considering implementation issues and that payors were applying guidelines inconsistently. One of the report recommendations was that the State develop utilization criteria, that is, overuse and under use criteria to be used by all payors.

One of the issues, Ms. Wynn commented, was whether to try to develop a new set of guidelines from existing guidelines or to develop completely new guidelines. It was determined that there were advantages to creating new guidelines for overuse and under use, as some of the existing guidelines from vendors performed poorly in their evaluations.

Ms. Wynn stated that RAND has developed a proposal to develop and field test overuse and under use criteria for lumbar spinal injuries which is the most costly injury. Although this proposal is motivated by issues in California workers' compensation, it could be used nationally in group health, Medicare, Medicaid, and other settings. Ms. Wynn stated that the overuse and under use criteria should address various modalities and several key issues, including the number of prescriptions, return-to-work evaluation and planning, and chronic pain management.

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Chair Wilson asked Ms. Wynn whether the study would involve CHSWC funds. Ms. Baker replied that they would be looking at foundations for other sources of funding and may not be looking at CHSWC funds per se.

Ms. Wynn provided an update on the Medical Fee Schedules. RAND has provided technical assistance with implementing and updating the Medicare-based fee schedules and a physician fee schedule. RAND has also been examining in depth the special areas of burn cases and repackaged drugs.

Ms. Wynn next addressed the setting of maximum allowable fees for repackaged drugs. She stated that FDA-approved repackagers purchase drugs in bulk and repackage them into individual prescription sizes for physician office dispensing. She also pointed out that although the Official Medical Fee Schedule (OMFS) for pharmaceuticals is tied to the MediCal pharmacy fee schedule, repackaged drugs are not in the MediCal formulary. The key issue therefore is the appropriate maximum allowable fee for repackaged drugs, as well as whether there is added value from repackaged drugs that warrants a higher payment and whether higher payments create incentives for over-prescribing.

Ms. Wynn stated that cost and quality implications of physician dispensing are not really known. Commonly cited advantages are patient convenience and better patient compliance. A key problem may be that the primary treating physician may not be familiar with all drugs the injured worker is taking and therefore may not test for drug interactions as would a pharmacist. Ms. Wynn further stated that repackaged drugs are marketed aggressively as a way for physicians to increase their practice revenues. There is considerable mark-up for repackaged drugs, with the mark-up being higher for workers' compensation patients than other payors. The cost implications are a function of the price and the utilization and outcomes. Maximum fees for repackaged drugs are higher than for pharmacy-dispensed drugs.

Ms. Wynn discussed a range of policy options: retain a premium for repackaged drugs, allow the same fee for pharmacy-dispensed and repackaged drugs; and eliminate the dispensing fee. Ms. Wynn pointed out that this study looked only at price differentials and that analysis of administrative data for prescription drugs is needed to assess other aspects of cost. Key questions for investigation are: the extent to which repackaged drugs are provided to injured workers and the impact on prescription drug costs; whether there are differences in prescribing practices; whether repackaged drugs improve outcomes; and the potential savings from alternative pricing policies.

Commissioner Wei asked Ms. Wynn to speak to the question of value provided by repackagers. Ms. Wynn replied that she could not locate any studies that document other than in a subjective way the patient convenience and the compliance issue. She further stated that on the compliance issue, it might be more important for drugs such as

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depression medication than for pain medication, because there are already problems with over-prescribing.

Commissioner Wei asked Ms. Wynn to speak to the issue of doctors using repackaged drugs in order to get higher reimbursement. Ms. Wynn replied that while the price that a physician might pay for a repackaged drug might be higher than the payment a pharmacist might make, there may still be a reasonable rate of return on receiving the same payment. The dispensing fee might be another issue.

Commissioner Wei asked if there are additional overhead costs or additional liabilities for use of repackaged drugs. Ms. Wynn replied that most of the drugs are tied to computerized medical management systems and the physicians can use these systems to look up medical management issues for the patient. This leads to physician convenience because there is no need to call to a pharmacist. In terms of putting a price tag on the convenience issue for either the patient or the physician, there is no documentation on this so far. There are some overhead costs.

Commissioner Wei asked if Ms. Wynn could speak to the dispensing fee and what exactly that fee is supposed to cover. Ms. Wynn replied that the dispensing fee is designed to cover the pharmacists' professional services in dispensing the drug, which include pouring the drug, reviewing what the drug is, and checking for dosages and interactions. The issue for workers' compensation is that there is already a professional fee that is typically being reimbursed at the same time, and that leads to the question of whether a dispensing fee is warranted.

Judge Lachlan Taylor commented that Ms. Wynn's research had been considered by the members of the Senate Labor Industrial Relations Committee the previous day in regard to controlling costs for repackaged drugs. Judge Taylor emphasized that this is the only workers' compensation bill in the Legislature this year that has the Chamber of Commerce and the Labor Federation working together to support the bill. The opposition to this bill consisted of physicians and repackagers.

Chair Wilson asked for action items on this study. Ms. Baker requested that the Commission members approve posting the paper on the CHSWC website to make it available publicly.

CHSWC Vote

Commissioner Wei moved to approve that the paper be posted on the CHSWC website, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Chair Wilson asked for description of the study and the impact of repackaging on costs. Ms. Baker deferred to Frank Neuhauser to respond. Mr. Neuhauser stated that Ms. Wynn focused on several issues that she could not address yet. The first one is exactly what the cost of these drugs is and how frequently they are being prescribed in the California

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system. The second issue involves changes to the utilization of the drugs being prescribed, either from brand name to generic or different prescription sizes or different frequency of prescription. All of these would have important price implications on the workers' compensation system. Mr. Neuhauser also stated that a study of these issues would be similar in the first stage to a CHSWC study a couple of years ago on the cost of pharmaceuticals that led to changes in the fee schedule. The study would take transaction data from insurers' payments and look at the composition of the drugs, specifically the composition and pricing of repackaged drugs, and would compare that data to the pricing of similar drugs with similar ingredients that are not sold through repackaging. The study would look at the prospects for some of the solutions Ms. Wynn offered for pricing the drugs. The study would also look at behavioral aspects, or the utilization effect, by assessing the impact on physicians who adopt repackaged drugs and would look at whether there are changes in the composition of the prescription practices and, potentially, changes in the outcomes for individual workers, such as time on disability and overall medical costs.

Ms. Baker stated that whether or not the legislation goes through, this study is going to be important for the Administrative Director of the DWC to establish a fee schedule. If the legislation goes through, it would provide an estimate of potential savings.

Chair Wilson asked if Ms. Baker recommends going forward with the study and what the cost estimate would be. Ms. Baker replied that she does recommend going forward with the study and that working with RAND would be important. The estimated cost of the study is \$80,000.

Commissioner Wei asked when the study would be done. Mr. Neuhauser stated that once the data is available, it would take about three months to develop an analysis and write a draft report for CHSWC. Ms. Wynn commented that the first part of the study would tell the differences in costs in terms of changes in utilization. Commissioner Wei asked if a preliminary report would be available before the close of the legislative session. She stated that she would want the study done to inform the legislation. Mr. Neuhauser replied that that would be possible.

Chair Wilson stated that he assumed that Ms. Baker would not be recommending this if it could not be done within the budget. Ms. Baker replied that it can be done within the budget and that it is appropriate now that the end of the fiscal year is near to encumber funds and do the study.

CHSWC Vote

Commissioner Davenport moved to approve the study, and Commissioners Steinberg and Wei seconded. The motion passed unanimously.

Ms. Wynn then addressed the subject of fees for burn cases and whether the OMFS is adequate. Before 2004, burn cases were exempt from the OMFS hospital inpatient fee

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schedule. They are now paid at 1.2 times the Medicare fee schedule. There are eight diagnosis-related groups (DRGs), each having a different rate of payment. The payment is fixed in advance and relies on an averaging concept. Some hospitals have had excessive losses on burn cases of injured workers, and there is concern that the exemption allowing additional payment for high-cost cases should be re-instituted for six of the eight DRGs.

Ms. Wynn stated that the study examined two questions, specifically how the costs of workers' compensation patients compare to costs for Medicare patients and what the relationship is between the OMFS payments and the estimated costs of providing care to injured workers. Ms. Wynn then stated that the data used was from 2003. Those Medicare 2003 rates were increased by 20 percent to determine what the estimated payments would be. She further commented that hospital mark-ups vary from department to department, so it would be important to have department-level data to do a more in-depth analysis.

Ms. Wynn stated that the findings of the study are that workers' compensation burn cases are less costly on average than Medicare patients in six of the eight DRGs. She noted that the DRG for extensive third-degree burns with skin grafts is 4.5 times greater than the others. In addition, there is a difference in the volume of service between workers' compensation and Medicare patients and a difference in the mix of DRGs. Ms. Wynn commented that the comparative analysis suggests that payments on average should be adequate. She then pointed out that OMFS rates may be inadequate for non-extensive burn cases and that those DRGs have not been proposed for exemption. She also pointed out that there is variation in payment-to-cost ratios across hospitals.

Chair Wilson asked what the effect is of funneling serious burn cases to specific centers. Ms. Wynn replied that five hospitals had more than 20 workers' compensation burn cases, and that was the set of hospitals to be most concerned about. Of those five hospitals, one had an average loss of \$4,716, while the other hospitals had gains.

Ms. Wynn then stated the results of the study do not support exemption. She stated that on average, injured workers are less costly than Medicare patients and have shorter lengths of stay; overall payment-to-cost ratios are adequate; and most hospitals have only a few burn cases. Some of the policy alternatives to exemption that should be considered are: payment based on estimated costs would be preferable to negotiated rates; the outlier threshold for additional payments for high-cost cases should be reduced; and special treatment should be limited to specific hospitals, those with burn units and with problematic DRGs.

Chair Wilson stated that the action item is to release the report to the public. Ms. Baker stated that the draft report has been circulated and is in RAND's final review process. Ms. Wynn stated that CHSWC is looking at a draft of the final version. Ms. Baker asked

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the Commission members for approval to release the report to the public once it is finalized through the RAND quality-control process.

CHSWC Vote

Commissioner Davenport moved to release the report, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Ms. Wynn then discussed the final task that RAND is working on which is to establish a conceptual framework for monitoring medical care. RAND is identifying the broad domains that should be routinely monitored: access and quality; patient satisfaction; cost; and health status and return-to-work outcomes. The study also will identify and review potential performance measurement and will develop design recommendations or a core set of measures. The ultimate monitoring system RAND would recommend would provide information on state-level performance, not individual providers, and would allow the State to identify potential problems and monitor the effect of policy interventions.

Issue Paper on US Longshore and Harbor Workers' Compensation Insurance

Christine Baker, CHSWC Executive Officer

Ms. Baker recognized CHSWC staff members Irina Nemirovsky and Brooke Nagle who developed the information for the Issue Paper on US Longshore and Harbor Workers' Compensation Insurance. The paper was developed in response to a request from Assemblymember Vargas, because of a bill under consideration to create a guaranty fund for US Longshore and Harbor workers' compensation insurance. CHSWC staff contacted Washington State, as well as other states and the US Department of Labor, to determine the appropriate measures. This paper has been circulated to interested parties and some minor changes have been made based on the comments received. The paper is now ready for posting on the CHSWC website and ready for distribution to the legislative staff with the approval of the Commission members.

CHSWC Vote

Commissioner Wei moved to post the paper on the CHSWC's website and to distribute it to the legislative staff, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Proposals for WOSHTEP

Christine Baker, CHSWC

Robin Baker, Labor Occupational Health Program, UC Berkeley

Ms. Baker stated that Robin Baker is representing both UC Berkeley and UCLA regarding the proposals for the Worker Occupational Safety and Health Training and

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Education Program (WOSHTEP), which has been extremely successful. The Commission has recently received a request from the Department of Corrections to present this program at all of their facilities in the state to reduce safety and health problems in the facilities. This program has been supported by labor and management. Robin Baker is here today to provide an update on the program and submit the interagency agreements for next year's funding for the Commission's consideration.

Ms. Robin Baker stated that UC Berkeley and UCLA are focusing on four areas mandated by the legislation that created WOSHTEP. The first area is to maintain resource centers to develop multilingual resources to be available on-line. As the CHSWC suggested, these resources are not being as widely used as possibly. Therefore, UC Berkeley and UCLA are currently working on outreach to ensure greater utilization of these resource centers.

The second area is the WOSH Specialist training program, based on the WOSHTEP curriculum. Ms. Baker stated that the curriculum is complete and in production in three languages, English, Spanish and Chinese. In addition, the first training of trainers for partner trainers was held in April, and the course is being scheduled for participants from various industries and types of workplaces in 2005 and 2006.

The third area is the small business model for very small businesses that are not able to send employees to the full 24-hour WOSHTEP curriculum. A restaurant model training program has been developed. Outreach and dissemination of that model is underway, as well as efforts to identify an additional industry partner group for the next industry for this model.

The fourth area is focus on a young worker leadership model, as specified in the legislation. UC Berkeley and UCLA are now focusing on developing youth as peer educators and leaders in health and safety in the workplace. A very successful statewide Young Worker Leadership Academy was developed and held in February 2005. Youth teams and their adult mentors participated, and the youth teams will be implementing their projects in May for Safe Jobs for Youth Month.

Chair Wilson asked Ms. Christine Baker to discuss the cost of the WOSHTEP program. Ms. Baker stated that CHSWC is very grateful to the insurance industry for providing the funds, as mandated by legislation, for this program. To date, \$1,200,000 has been collected for this fiscal year, and these funds are dedicated for this program, which was provided to CHSWC during the AB 749 period. CHSWC has two inter-agency agreements and they have been reviewed extensively by all the CHSWC staff. One proposal goes to LOHP for \$430,000 and one proposal to UCLA's Labor Occupational Safety and Health (LOSH) Program for \$420,000.

Commissioner Davenport asked if the funds can be spent only on this program. Chair Wilson responded that that was the case.

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CHSWC Vote

Commissioner Davenport moved to approve the proposals for WOSHTEP, and Commissioners Schwenkmeyer and Wei seconded. The motion passed unanimously.

Ms. Christine Baker then stated that there was a contract for the Young Worker Health and Safety Program which is under WOSHTEP but is presented as a separate contract for the Commission's approval.

CHSWC Vote

Commissioner Wei moved to approve the proposals for the Young Worker Health and Safety Program, and Commissioner Davenport seconded. The motion passed unanimously.

Executive Officer Report

Christine Baker, Executive Officer

Christine Baker presented the Executive Officer Report with an update on the projects since the last CHSWC meeting. CHSWC staff has been extremely busy, either responding to information requests from the legislature or preparing reports. Staff is also preparing Requests for Proposals (RFPs) and project contracts.

Ms. Baker stated that the background of the RFP on fraud was a report by the California State Auditor, released on May 12, 2004, indicating that the detection and prevention efforts for fraud are poorly planned and that there is a lack of accountability. The State Auditor indicated that the extent and nature of fraud within the workers' compensation system are not adequately measured or monitored and further indicated that there is no overall strategy to direct statewide workers' compensation anti-fraud efforts.

Ms. Baker stated that CHSWC has responded to a request of the Chair of the Fraud Assessment Commission (FAC), William Zachry, for CHSWC to assist the FAC in developing several studies to assess the nature and extent of fraud in the system. CHSWC has had two working group meetings with enforcement, labor and management in attendance. CHSWC staff has contacted Professor Sparrow from Harvard University to assist with anti-fraud measures under provider fraud and has developed an RFP under his guidance. CHSWC has also worked with Frank Neuhauser from UC Berkeley and with Les Boden from Boston University to develop the proposals and the RFP. Les Boden is renowned for doing work on under-reporting of claims in the country.

Ms. Baker stated that the RFP that has been developed would be provided to the FAC for consideration and funding. This RFP has been circulated and has been through an advisory group review, and now would move to the FAC for its consideration. This

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study would evaluate medical provider fraud, overall assessment of fraud, and broker fraud. This RFP would be funded by the FAC. Ms. Baker discussed additional studies that, if funded by CHSWC, would determine overall estimates of fraud and would take into consideration the work of Frank Neuhauser and Les Boden. These studies would look at the gray economy, under-reporting and uninsured employers.

Ms. Baker stated that the medical provider RFP could be funded by the FAC. The additional studies would estimate the fraud and abuse in the system in the area of lack of coverage, premium avoidance and claims under-reporting.

Commissioner Steinberg asked for clarification about the analysis that was done on fraud. Ms. Baker responded that currently, \$30 million dollars are assessed to employers for anti-fraud activities. These monies are distributed to the Department of Insurance and to the District Attorneys office. The State Auditor's study determined that there was no strategic plan and no overall program for determining if those monies are being spent appropriately. Because the FAC has no staff, the Chair asked for CHSWC's assistance to develop studies to respond to that criticism.

Commissioner Steinberg stated that he understood that the FAC had about \$30 million a year to do its work, and he asked who is paying for these studies. Ms. Baker stated that the proposal is for the FAC to pay approximately \$1 million to study medical provider and broker fraud. The other proposal is for CHSWC to fund a study of uninsured employers, the gray economy and the under-reporting.

CHSWC Vote

Commissioner Davenport moved to proceed with the studies, and Commissioner Steinberg seconded. The motion passed unanimously.

Ms. Baker then stated that on other projects, Commission staff is working on an RFP for the return-to-work study and on a joint study with NIOSH on the issue of safety and public safety employees. Both studies were already authorized by CHSWC and are going through the State of California RFP process.

CHSWC is also working with RAND and USC on a terrorism conference which will be broken into two conferences with two major topic areas. The first conference will be on June 20, 2005, at USC, and will address the insurance aspects of terrorism. The second conference will be in the fall of 2005 and will address safety and disaster preparedness aspects of terrorism. Ms. Baker stated that it would be helpful to have a background paper prepared by CHSWC as part of this conference. She asked if that would be of interest to the Commission members.

Chair Wilson stated that CHSWC should look at how New York reacted to 9/11, as their system had the most direct experience with terrorism. Ms. Baker stated that they would

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look at New York and also at other states. Chair Wilson said that some sort of background would be in order as people need to become aware of this issue.

Ms. Baker then stated that CHSWC has had a request from the legislature, from Assembly member Richmond's office, regarding public access to workers' compensation insurance coverage information. Information about what other states has done has been updated from a previous CHSWC document. The Commission would like to release this paper to the public.

Commissioner Wei asked if the Department of Insurance (DOI) was required to produce this information publicly. Chair Wilson responded that if they are required to do so, they are not doing it. Ms. Baker responded that proof of coverage by employer is not available. Judge Taylor stated that the WCIRB has records of which employers are covered by which carrier, and there has been a suggestion about how to make this information available. Chair Wilson stated that the only agency providing this information is the contractors' board, so that if you know the license of a contractor, you can put that into the system and find out who the contractor's carrier is.

Commissioner Wei asked if there is anybody who is required by law to do this but is not doing it. Judge Taylor responded that WCIRB is the Insurance Commissioner's statistical support agency and this information would fall under that agency. Chair Wilson stated that the Commission's paper indicated that it would take 30 days after a request for information for the information to be available and that this delay would not be very helpful. He stated that the Commission's information should be available for public discussion.

CHSWC Vote

Commissioner Davenport moved to proceed with the evaluation study, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Briefing on Apportionment

Lachlan Taylor, Workers' Compensation Judge, CHSWC

Judge Taylor stated that a study by Larry Swezey on apportionment was circulated for public comment after the February 24, 2005, Commission meeting but that no comments had been received. Since that time, the Workers' Compensation Appeals Board (WCAB) has issued an *en banc* decision, and Larry Swezey has developed a memo on the decision. Judge Taylor stated that he recommends that a follow-up memo by Larry Swezey be released for public comment.

Commissioner Steinberg asked for clarification about the lack of comments on Larry Swezey's paper. Judge Taylor said that the workers' compensation community was probably waiting for the WCAB decision and that there might be more comments now.

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CHSWC Vote

Commissioner Wei moved to release the follow-up memo for public comment, and Commissioner Davenport seconded. The motion passed unanimously.

Ms. Baker then stated that she would like to report that there is confusion about return-to-work notices, timing, and interpretation of the current law. The staff would like to do some work in this area to provide some clarity.

Commissioner Wei commented that the AD of the DWC stated yesterday that she would be re-looking at the interpretation of the specific return-to-work bump-up/bump-down provisions as they apply to small employers. Commissioner Wei encouraged CHSWC staff to help clarify this area and help ensure that the final interpretation is followed and understood by everybody.

Public Comment

Chair Wilson opened the meeting for public comment.

Vancois D'Amoun, injured worker, reported about progress on the issues he discussed at the last Commission meeting. He stated that he continues to have problems with authorizations and access to doctors. He further stated that he does not understand why the system is working against getting medical attention. Chair Wilson responded that he would like Mr. D'Amoun to talk to some of the staff about his individual problems.

Jay Westphal, MD, MPH, an occupational medicine physician treating injured workers in California, predominantly acute care, stated that he has a concern about paying for packaged drugs and that both the type and quantity of drugs listed in the CHSWC study by RAND appear to apply to chronic medical problems. He stated that those drugs might apply to a small percentage of injured workers. Although that would still be significant because this group has high claim costs, he is concerned that the issue of repackaged drugs would affect the types of patients that he is seeing. In addition, he stated that the added value of repackaged pharmaceuticals is quite significant, as they increase patient compliance because the patient can leave the doctor's office with medication. He also stated that there are significant savings for physicians that are created by repackaged drugs, including saving of administrative time and costs. Chair Wilson urged Dr. Westphal to talk to Commission staff about his comments.

Grace Gonzales from Southwood Pharmaceuticals, a repackager mentioned in the RAND study, stated that comments on the drug Ultram in the RAND report are incorrect. She also stated that repackagers are regulated by five different bodies and have to be re-certified periodically to conform to current manufacturing guidelines. Repackagers are also required to perform tests for purity and integrity of their incoming products and to

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perform stability tests to determine longer expiration dates for all the products they supply to physicians.

Commissioner Wei asked about the pricing on Ultram. Ms. Gonzales replied the average wholesale price (AWP) for Ultram is actually \$125.23. Charles Smith, a representative of a company providing repackaging services, stated that approximately ten repackagers provide services to different areas, representing a significant percentage of providers. These providers of repackaging services have found serious issues with the RAND report, specifically that 33 percent of the data points are wrong. He stated that most providers dispense drugs in smaller quantities than the quantities stated in the RAND report, making the costs cited in the report inflated.

Commissioner Wei asked if per unit dollars are included in the report and what the dosing has to do with it. Mr. Smith replied that the discrepancy would be smaller if you were looking at smaller doses, because there is averaging. Commissioner Wei pointed out that due to economies of scale, the cost should come down if the number of units goes up. Mr. Smith replied that most of the providers in California dispense one vial of 20 pills. He also stated that most providers in the system are trying to stay within the system and their biggest interest is to get the injured worker back to work quickly.

Commissioner Wei asked if Mr. Smith could provide his cost data and pricing data. Mr. Smith replied that he would and that Southwood Pharmaceuticals has already done that for Senator Alarcón's office.

Commissioner Davenport stated that he would prefer to hear comments from the public when the report is being presented. Chair Wilson responded that that was the case with a couple of the earlier presentations.

Mr. Smith further commented that Medi-Cal is the lowest of the payors; it is not .83 of AWP; it's the lowest of MAIC or FAC, so those rates are significantly lower. He stated that the RAND study should be sure to choose a before and after provider, because in his experience of 20 years in the field, the doctors that do this are aggressive and want the patient back to work. Those who don't dispense are not as aggressive about making sure the job is done.

Marlene Dines, a Board Member and representative of Disability Management Employer Coalition, stated that they are having a mid-year legislative update at their June 3rd meeting in San Francisco, which will present issues from the applicants' attorney and the defense attorney perspective. There will be a moderator from the DWC and discussion on what the experiences have been thus far following the 2005 new workers' compensation legislation. She invited everyone to attend this meeting.

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Adjournment

The meeting was adjourned at 12:30 p.m. The next CHSWC meeting is scheduled for Thursday, August 25, 2005, in Oakland.

Approved:

John C. Wilson, Chair

Date

Respectfully submitted:

Christine Baker, Executive Officer

Date